IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9085 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVIND KALIDAS KAHAR

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PHAWA FOR M/S THAKKAR ASSOC. for Petitioner

MR UR BHATT, AGP for Respondents. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Baroda City on 9th August, 2000 in exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social

Activities Act, 1985 (PASA for short). The petitioner came to be detained in pursuance of the above said order from 10th of August, 2000.

2. The detaining Authority took into consideration the investigation made in a crime registered against the petitioner on 10th June, 2000 under Sections 307, 332 and 114 of the I.P.C. and three statements of the witnesses who offered their statements on assurance of anonymity of identity. From the above materials, the detaining authority came to the conclusion that the petitioner was a "dangerous person" within the meaning of Section 2(c) of the PASA Act and was indulged in promoting communal disorder. The detaining authority also came to the conclusion that the petitioner was hardened criminal and headstrong person and due to his fear, nobody came forward to file any complaint against the petitioner. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Ms. Suman Phawa on behalf of M/s Thakker Associates for the petitioner and learned Advocate Mr. Udai Bhatt, learned AGP for the respondents were heard.

4. Amongst other Various grounds which were advanced on behalf of the petitioner to challenge the detention order, inter alia, it has been vehemently urged that the order in question is required to be set aside on the ground of delay alone. It was stated that in the month of June an offence came to be registered and the petitioner was released on bail thereafter, the order came to be passed on 9th of August 2000. Therefore, it was urged that the order was required to be quashed and set aside.

5. The Apex Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in 1993 (2) Suppl. SCC 61, ruled that unexplained delay in passing of the order of detention, whether short or long, especially when the petitioner has taken a specific plea of delay, vitiated the detention order, was required to be set aside. When the faCts of this case are considered with the above said observations of the Apex court, it clearly appears that the order of detention is required to be set aside on that ground of delay alone. In the present case, under Section 307 of the IPC the offence came to be registered on 10th June, 2000 before Panigate Police Station. Soon thereafter, the petitioner was released on bail. The order of detention came to be passed on 9th of August,

2000. The detaining authority has taken into consideration the statements of three witnesses recorded on 30th June, 2000, verified by the detaining authority only on 7th of August, 2000. The statements of the witnesses, which placed on record, refers to the incidents of 7, 17 and 25th of June, 2000. From the above facts, it is clear that there is a delay in passing of the order of detention after the petitioner was released on bail. An attempt is made to cover that period by the statement of the witnesses i.e. the crimes which are not registered. Witnesses also offered the statement on 30th June, 2000, which was verified on 7th of August, 2000. This delay in verifying statements is also not explained by the detaining authority nor the delay in passing of the order thereafter on 9th of August, 2000 is explained. In view of the fact that the offence came to be registered against the petitioner on 10th June, 2000 and since then the petitioner was on bail and the order of detention came to be passed as late as on 9th of August, 2000, which delay is not explained by the detaining authority, the order of detention is required to be set aside. In this view of the matter, the present case is squarely covered by the above said decision of the Apex Court in the matter of of PRADEEP NILKANTH (supra). Therefore, the order of detention will have to be held vitiated on the ground of delay alone.

6. For the above said reasons, this petition is allowed. The order passed by the Police Commissioner, Baroda City on 9th August, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Arvind Kalidas Khar is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair